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SUBJECT: LABOR MONITORING AND ENGAGEMENT WITH EL SALVADOR

REF: 09 STATE 129631; 10 SAN SALVADOR 45

Summary

¶11. (U) Labor rights in El Salvador are generally respected but suffer from inadequate enforcement, and labor discrimination and violations of worker's rights do occur. However, El Salvador's new FMLN government has favored greater enforcement of labor rights than have prior administrations, and has taken steps to improve its labor inspection system as well as enforcement of labor laws. USAID sponsors a number of regional programs for CAFTA-DR countries, including El Salvador. The U.S. Department of Labor (DOL) and the Department of State fund other labor-related programs, including programs in conjunction with the International Labor Organization (ILO). Future programs should focus on strengthening the rule of law in the labor area, migrant worker issues, and expediting the labor justice system. End summary.

Labor Environment

¶12. (U) El Salvador's labor force of approximately 1.72 million is perceived as hard working and receptive to training and advanced study. The general educational level is low, and the skilled labor pool is shallow, which may pose problems for investors needing skilled, educated labor. According to many large employers, there is a lack of middle management-level talent, which sometimes results in foreigners being brought in to perform such tasks. Employers have expressed concern with more aggressive government efforts to expand unionization inside the private sector. In addition, business leaders have been affected by inefficient government processing of applications to export machinery, which are required by the Ministry of Labor to ensure that wages owed to workers are paid by companies before they downsize or leave the marketplace.

¶13. (U) In March 2009, voters elected Carlos Mauricio Funes Cartagena of the (left-leaning) Farabundo Marti National Liberation Front (FMLN) as president for a five-year term in generally free and fair elections. The FMLN government has historically had strong ties to many of the country's labor organizations, and the Ministry of Labor under the Funes administration has made important steps to strengthen labor rights, including facilitating the registration of unions, and allowing government workers to

unionize.

¶4. (U) Although hard-line elements of the FMLN aspire to establish Chavista-style socialism, President Funes has maintained a commitment to economic development through a free-market system. Minister of Labor Victoria Marina Vel????squez de Avil????s and Vice Minister Calixto Mejia Hern????ndez have emphasized their support for rule of law in labor disputes. They have also embraced the themes of corporate social responsibility and social dialogue, following the ILO's tripartite framework and its "White Book" recommendations. The Salvadoran government (GOES) and the Ministry of Labor (MOL) have stated their desire to work cooperatively with the private sector to encourage economic growth.

¶5. (U) The U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), implemented between El Salvador and the United States on March 1, 2006, provides El Salvador preferential access to U.S. markets. Information on CAFTA-DR and other labor programs can be found in paragraphs 16 through 18.

¶6. (U) In 2006, the Government of El Salvador and the Millennium
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Challenge Corporation (MCC) signed a five-year, \$461 million anti-poverty Compact to stimulate economic growth and reduce poverty in the country's northern region through investments in education, public services, enterprise development, and transportation infrastructure.

Labor Rights

¶7. (U) The constitution permits public and private sector workers to form unions. The only restriction on forming unions affects the public sector and specifically the police force, the army and the members of the judiciary, as well as all high-level public officials. While the law prohibits anti-union discrimination, discrimination does occur. Employers are free to hire union or non-union labor. Closed shops are illegal. The constitution recognizes the right to strike, which is freely practiced by labor unions, despite cumbersome regulatory requirements which are ignored in practice.

¶8. (U) There have historically been problems with employers who illegally retain workers' social security and pension benefits, violate labor safety conditions, practice labor discrimination, and commit violations against the freedom of association and the right to strike. Although the law prohibits discrimination on the basis of race, gender, disability, language, or social status, in practice the government does not effectively enforce these prohibitions. There is discrimination against women, persons with disabilities, gay and lesbian persons, and indigenous people. Gender-based wage disparity also remains a problem. There have been allegations of corruption among labor inspectors in the apparel assembly industry.

¶9. (U) The law prohibits forced or compulsory labor, as well as the employment of children under the age of 14, but child labor remains a serious and widespread problem. There have been

allegations of trafficking of persons for forced commercial sexual exploitation and apparel assembly labor.

¶10. (U) The MOL is responsible for setting workplace safety standards, and the law on occupational health and safety standards establishes a tripartite committee to review the standards. The MOL has 159 labor inspectors distributed nationwide. The government passed a new occupational health and safety law in January.

¶11. (U) The MOL enforces minimum wage laws, which are set by executive decree, based on recommendations from a tripartite committee comprising representatives from labor, government, and business. There is no national minimum wage; the minimum wage is determined by sector. The minimum daily wage in 2009 was \$6.92 for retail and service employees, \$6.77 for industrial laborers, and \$5.79 for apparel assembly workers. The agricultural minimum wage was \$3.24. The minimum wage did not provide a sufficient standard of living for a worker and family. Although during 2009 basic subsistence costs for food were \$169.34 per month, the highest monthly minimum wage nationally was \$207.60. The MOL recently said it would like to raise the minimum wage in the textile sector.

¶12. (U) The law sets a maximum normal workweek of 44 hours, limited to no more than six days, and requires bonus pay for overtime. The law mandates that full-time employees be paid for an eight-hour day of rest in addition to the 44-hour normal workweek. The law prohibits compulsory overtime. The government's gender and labor discrimination unit reported that assembly plants generally respect the laws on overtime. However, most of these plants require workers to work extra days in order to meet production goals, with a promise of incentive pay in addition to overtime.

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¶13. (U) Sources:

-- Country Reports on Human Rights Practices:
<http://www.state.gov/g/drl/rls/hrrpt/>

-- El Salvador Post Report: (
http://mmsweb.a.state.gov/asp/postreport/view/pr_view.asp?CntryID=48)

-- Background Note: El Salvador (September 2009): (
<http://www.state.gov/r/pa/ei/bgn/2033.htm>)

-- 2009 Investment Climate Statement - El Salvador:
<http://www.state.gov/e/eeb/rls/othr/ics/2009/117666.htm>

-- Labor regulations, Ministry of Labor: <http://www.mtps.gob.sv>

¶14. (U) Key Organizations involved in labor rights issues:

-- Ministry of Labor and Social Provision
-- International Labor Organization (ILO)
-- National Council for Disabled Persons (CONAIPD)
-- Survivors Network (Disability advocacy NGO)
-- The Salvadoran Institute for the Development of Women (ISDEMU)
-- The Salvadoran Network Against Trafficking, made up of the ILO, Catholic Relief Services, Save the Children, the Anglican Church of El Salvador, CARECEN International, Caritas, and the Salvadoran National Women's Commission.

¶15. (U) Point of contact for FTA labor matters in the host country's labor ministry: Michelle Garc????a, Legal Advisor on Free Trade Labor Agreements. Tel. 2209-3734.

Current Programs

¶16. (U) USAID estimates that there are approximately 87 labor programs operating in the CAFTA-DR countries. The most salient of those affecting El Salvador are listed below.

¶17. (U) USAID Programs: USAID's current labor justice programs are regional programs, and the areas of assistance listed below generally apply to all the CAFTA-DR countries:

-- Strengthening Labor Justice Program for CAFTA-DR aims at transparent and efficient labor justice through the use of electronic case tracking and management systems in all CAFTA-DR countries, the raising of professional standards in the judiciary and labor-related sectors, and the use of alternative dispute

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resolution in labor justice cases.

-- Citizens' Access to Labor Justice Program for CAFTA-DR works with civil society organizations to increase access to labor justice. The components of the program are: strengthening public defense (free legal aid), civil society monitoring of labor justice, training of the ombudsman's offices in labor discrimination, and interest-based bargaining for labor conflicts.

-- Modernization of Labor Ministries Program for CAFTA-DR supported the use of information communication technology (ICT) by Ministries of Labor throughout the region in order to deliver services to workers and employers, as well as to the ministries' civil servants. The project assisted the Labor Ministries to upgrade antiquated systems, hire and train professional personnel, reorganize to better utilize management information, and identify dedicated financing needed for sustainability. The project ended in December 2009.

-- More information on USAID programs is available at
<http://www.usaid.gov/sv/development.html>.

¶18. (U) Other programs of note include the following:

-- The GOES, in conjunction with the ILO, operated child labor awareness programs supported by the Department of Labor to encourage school attendance, and developed a "Road Map" in conjunction with the ILO for the elimination of child labor in its worst forms by 2015 and in its totality by 2020. The private sector also provides support for efforts to combat child labor.

-- Cumple y Gana, a Department of Labor (DOL)-funded NGO, recently completed a training program for MOL inspectors, assisting in the building of more effective and reliable Labor Ministry Inspection Systems to enforce labor laws.

-- Solidarity, an AFL-CIO outreach organization funded in part by DRL, also works with local NGO Centro de Estudios y Apoyo Laboral (Center for Labor Studies and Support, abbreviated CEAL) to train labor organizations about basic labor law and international labor instruments that protect the rights of workers.

-- Business for Social Responsibility (BSR) - in partnership with the Center for Latin American Competitiveness and Sustainable Development (CLACDS) at the INCAE business school - conducts a Responsible Competitiveness program that targets companies, executives, and investors throughout the region to promote corporate social responsibility (CSR).

-- Improving Employer Compliance with Social Security Laws, a Department of Labor project implemented through Alexius International, is creating a communications platform that will allow the GOES to forward social security payment receipt notifications to workers to allow them to notify the Social Security Institute in case of an anomaly, e.g., nonpayment of benefits by an employer.

-- In January, Department of Labor (DOL) Deputy Undersecretary for International Affairs Sandra Polaski met with GOES officials to promote the Better Work Program and to initiate discussions on a new child labor program (ref B). The DOL plans further meetings with GOES officials to implement these programs.

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Recommendations

¶19. (U) El Salvador's foremost co-operation needs at this time are guidance in the rule of law regarding the administration of labor law, contract enforcement, and mediation. Post's recommendations and suggestions for further cooperation assistance for El Salvador are the following:

-- Improvement of labor sentences enforcement (including design and implementation of preventive measures);

-- Linkage of administrative (Ministry of Labor) and judicial (labor court) labor processes, including enforcement of administrative decisions, and rules of evidence;

-- Restructuring and strengthening bar associations;

-- Legal reforms, including reforms to the procedural labor code and occupational safety requirements.

-- Studies on migratory workers and working conditions for migrants in El Salvador.

¶20. (U) POC for USAID Labor Programs in El Salvador is Regional Labor Justice Programs Manager Ivan Seassal. Contact: iseassal@usaid.gov; phone: (503) 2501-3382.

¶21. (U) Embassy POC is Labor Officer Michael Roth. Contact: rothmr@state.gov; phone: (503) 2501-2050.
McGEE